



**THE ATTORNEY GENERAL
OF TEXAS**

CRAWFORD C. MARTIN
ATTORNEY GENERAL

AUSTIN, TEXAS 78711

July 21, 1967

Honorable James E. Jeffrey
County Attorney
Taylor County Courthouse
Abilene, Texas

Opinion No. M-107

Re: Whether a Commissioners
Court is authorized to
designate a bank as
county depository under
the facts and circum-
stances presented

Dear Mr. Jeffrey:

You have requested the opinion of this office re-
garding the above question. In this connection you have sup-
plied the following facts:

"A certain bank desires to be designated
as a county depository to receive funds which
will result from a bond issue as a result of
an election this year. The bank could not file
an application to qualify as a county depository
at the February regular term because one of the
members of the Commissioners Court is a director
and owns stock in such bank. We understand that
Legislation was enacted this year removing such
inhibition in situations where a county official
owned less than 10% of the stock in a bank seek-
ing designation as a county depository. The mem-
ber of the Commissioners' Court owns less than
10% of the stock in the bank, and he is still a
director."

In examining the question you have posed, the follow-
ing statutes, quoted in pertinent part, are applicable:

"Art. 2544. The Commissioners Court of each
county is hereby authorized and required at the
February Regular Term thereof next following each
general election to enter into a contract with any
banking corporation, association or individual
banker in such county for the depositing of the
public funds of such county in such bank or banks.
Notice that such contracts will be made by the
Commissioners Court shall be published by and

over the name of the County Judge, once each week for at least twenty (20) days before the commencement of such term in some newspaper published in said county;"

"Art. 2545. Any banking corporation, association or individual banker in such county desiring to be designated as county depository shall make and deliver to the County Judge an application applying for such funds and said application shall state the amount of paid up capital stock and permanent surplus of said bank and there shall be furnished with said application a statement showing the financial condition of said bank at the date of said application which shall be delivered to the County Judge on or before the first day of the term of the Commissioners Court at which the selection of the depositories is to be made. . . ."

"Art. 2546. It shall be the duty of the Commissioners Court at ten o'clock a. m. on the first day of each term at which banks are to be selected as county depositories, to consider all applications filed with the County Judge, cause such applications to be entered upon the minutes of the Court and to select those applicants that are acceptable and who offer the most favorable terms and conditions for the handling of such funds and having the power to reject those whose management or condition, in the opinion of the Court, does not warrant placing of county funds in their possession. . . ."

The statutes above quoted grant to the Commissioners Court the authority to select a county depository or depositories at a certain time and by following a specified procedure. This office has previously declined to approve any variation from the established procedure. Attorney General's Opinion O-3832 (1941) expressed the view that a county may properly designate one or more banking institutions as county depositories, but only if such depositories are selected from "those banking institutions who have regularly made application in accordance with the statutes." Attorney General's Opinion O-4451 (1942) cited Attorney General's Opinion O-3832 with approval, and declined to approve a plan which called for variation of the depository rules established by statute.

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The contention has been advanced that an enactment of the 60th Legislature can be construed to make it permissible for the particular bank involved in your question to become qualified as a county depository immediately. The new statute in question is Acts, 60th Legislature, 1967, Chapter 179, Page 370, codified as Article 2529c, Vernon's Civil Statutes. This Act provides, in essence, that a bank shall not be disqualified from becoming the depository for any political subdivision by virtue of the fact that a member of the Board or Commission selecting such depository holds ten percent or less of the bank's outstanding capital stock. This Act went into effect as an emergency measure on May 12, 1967. The said new statute does not purport to amend or repeal any of the statutes controlling the selection of county depositories in this State. This Act by its terms overruled the common law rule regarding conflicts of interest where the public official concerned with selecting the depository holds ten percent or less of the outstanding capital stock in the said depository. It is the view of this office that the said statute has the effect of making the bank in question immediately eligible for selection as a county depository, but such selection may nevertheless be made only at such time as a county depository may properly be selected by the county government.

In answer to your specific question, you are advised that it is the opinion of this office that the Commissioners Court of a county does not have the authority to designate a bank other than the properly established county depository or depositories to receive special funds resulting from a county bond issue.

S U M M A R Y

Under the stated facts, the Commissioners Court of a county does not have the authority to designate a bank as a county depository in addition to other qualified depositories to receive funds resulting from a county bond issue.

Very truly yours,


CRAWFORD C. MARTIN
Attorney General of Texas

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APPROVED:
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